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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re William S., a Person Coming Under the Juvenile
Court Law.

C079197

THE PEOPLE,

(Super. Ct. No. JV134047)

Plaintiff and Respondent,

v.

William S.,

Defendant and Appellant.

After a contested jurisdiction hearing, the juvenile court found that the minor William S. committed battery with serious bodily injury. (Pen. Code, § 243, subd. (d); unless otherwise set forth statutory references are to the Penal Code.) The juvenile court sustained the wardship petition (Welf. & Inst. Code, § 602, subd. (a)), denied the minor's

request to reduce the charge from a felony to a misdemeanor (§ 17, subd. (b)), and placed the minor on probation.

On appeal, the minor contends the juvenile court abused its discretion in refusing to reduce the battery charge from a felony to a misdemeanor. We conclude the trial court did not abuse its discretion, and therefore affirm the order denying the minor's section 17, subdivision (b) motion.

FACTS AND PROCEEDINGS

The victim in this case, R.M., and two of his friends testified at the contested jurisdiction hearing on behalf of the prosecution. The facts below regarding the altercation giving rise to this case are taken from their testimony.

In January 2014, R.M., who was then 13 years old, went to a local high school with three of his friends to "hang out and skate." At some point, R.M. observed the minor, who was almost 17 years old, and another individual, C.B., sitting on a bench about 50 to 75 yards away. While R.M. and his friends were playing hide-and-seek, the minor yelled at them, saying: "Get out of here." R.M. and his friends responded by saying: "Why should we leave?" The minor also yelled: "Why are you here?" or "What are you doing here?" In response, R.M. said: "It's none of your business." According to R.M., the minor repeatedly yelled: "Get out of here." At one point, R.M. replied: "Why?"

Eventually, the minor, who was about five inches taller than R.M., confronted R.M. and said: "The fuck you say to me?" The minor then dared R.M. to hit him. After R.M. said that he would not do so, the minor got within five inches of R.M.'s face and repeated the dare. R.M. then pushed the minor away. When the minor returned to within five inches of R.M.'s face, R.M. pushed him again. The minor then punched R.M. in the face, causing R.M. to spin around and fall to the ground. The minor and C.B. then walked away.

A CT scan revealed a fracture of R.M.'s maxillary sinus, i.e., "the sinus right behind [the] cheekbone." The fracture was "comminuted," meaning that the bone, which was paper thin, had fragmented. According to R.M., it took about three weeks for the pain to go away.

C.B., the minor, and the minor's father testified on behalf of the minor. The minor's father testified as to the minor's nature and character, while C.B. and the minor testified regarding the altercation.

According to C.B., R.M. and his friends yelled at him and the minor first. C.B. testified that, when he and the minor approached R.M. and his friends, R.M. pushed the minor two times and then put his fists up and got into a fighting stance. C.B. stated that the minor warned R.M. not to push him. He also stated that the minor punched R.M. shortly after R.M. pushed the minor a second time and got into a fighting stance. C.B. claimed that the minor did not taunt R.M.

The minor testified that he approached R.M. and his friends because he was unable to hear what they were saying. The minor said that he told R.M. and his friends to leave the school because they were being disrespectful and/or "uncivilized." He also said that he warned R.M. that they would fight if R.M. pushed him a second time. According to the minor, he punched R.M. in self-defense after R.M. pushed him a second time and put his arms up and assumed a fighting stance. In claiming self-defense, the minor explained that he thought R.M. was about to hit him, and that he was concerned R.M.'s friends would strike him with their skateboards. The minor denied that he threatened R.M. or any of his friends. He also denied that he told R.M. to hit him.

In June 2014, a juvenile wardship petition was filed (Welf. & Inst. Code, § 602, subd. (a)), alleging that the minor had committed battery with serious bodily injury (§ 243, subd. (d)). A contested jurisdictional hearing was held in October 2014. At the conclusion of the hearing, the juvenile court sustained the petition. The court found it true beyond a reasonable doubt that the minor committed battery with serious bodily

injury. (§ 243, subd. (d).) In so finding, the juvenile court rejected the minor's claim of self-defense, reasoning: "Basically, you can't be the aggressor and then claim self-defense, which is what happened here."

After noting that the minor lived in Sacramento County, defense counsel made an oral motion to reduce the battery charge from a felony to a misdemeanor pursuant to section 17, subdivision (b). The juvenile court declined to rule on the motion because it did not have the minor's probation records from Sacramento County or the benefit of a probation report. In doing so, the court noted that a reduction of the battery charge to a misdemeanor "might" be appropriate if the minor "had no record." The court further noted that R.M.'s injury was a fracture to a "paper thin bone that did not require surgical treatment."

The case was transferred to Sacramento County and a disposition hearing was scheduled. Prior to the hearing, the minor filed a motion to reduce the battery charge from a felony to a misdemeanor. (§ 17, subd. (b).) At the conclusion of the disposition hearing, the juvenile court denied the minor's motion to reduce, adjudged the minor a ward of the juvenile court, and placed the minor on probation. In reaching this determination, the juvenile court found that a reduction of the charge was inappropriate given the minor's prior history and the nature of the offense. With respect to the minor's prior history, the record discloses, among other things, that the minor had a history of suspensions from school, including a suspension for bullying a third grader when he was in eighth grade. The record also discloses that the minor was placed on six months' probation in 2012 after he admitted to recklessly causing a fire to property of another.

The minor filed a timely notice of appeal.

DISCUSSION

The minor contends the juvenile court abused its discretion in declining to reduce the battery charge from a felony to a misdemeanor.

A violation of section 243, subdivision (d) is a “wobbler,” meaning the offense is punishable as a felony or misdemeanor. Section 17, subdivision (b) gives the trial court discretion to reduce a wobbler offense from a felony to a misdemeanor. (*People v. Mendez* (1991) 234 Cal.App.3d 1773, 1779.) In exercising its discretion, the trial court must consider all relevant factors, including the defendant’s criminal past, public safety, the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, and his traits of character as evidenced by his behavior and demeanor at the trial. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978, 981-982.)

The defendant bears the burden of clearly showing that the trial court’s denial of his motion to reduce was irrational or arbitrary. (*People v. Alvarez, supra*, 14 Cal.4th at p. 977.) “ ‘In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ [Citation.]” (*Id.* at pp. 977-978.)

We conclude the juvenile court did not abuse its discretion in denying the minor’s motion to reduce the battery charge from a felony to a misdemeanor. The record reflects the juvenile court considered the relevant factors and arrived at a decision that was neither arbitrary nor irrational. The juvenile court’s ruling demonstrates that it considered the nature of the offense, the minor’s criminal past, and public safety. In reaching its decision, the juvenile court specifically cited the nature of the offense, noting that the minor’s punch caused “a lot of damage.” The juvenile court also cited the minor’s prior history, which included bullying a third grader when the minor was an eighth grader, and recklessly setting fire to property of another. The minor has offered various reasons to disagree with the juvenile court’s decision, but none of them persuade us that the juvenile court abused its discretion.

DISPOSITION

The order denying the minor's section 17, subdivision (b) motion is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ ROBIE _____, J.

_____ MURRAY _____, J.